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10/566,639

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EXAMINER

LEO, LEONARD R

ART UNIT

PAPER NUMBER

3785

MAIL DATE

DELIVERY MODE

10/20/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/566,639 | Applicant(s) BONNER, MICHAEL R. | |
| | Examiner Leonard R. Leo | Art Unit 3785 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,9-18,21-23,25-30,32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9-18,21-23,25-30,32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed on October 8, 2010 has been entered. Claims 3, 8, 20, 24 and 31 are cancelled, and claims 1-2, 4-7, 9-18, 21-23, 25-30 and 32-33 are pending. The finality of the previous Office action is withdrawn.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “sensor” in claims 11 and 29 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11 and 29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification lacks an adequate written description of the invention. There is no basis for “a sensor ... for detecting the *pressure* of said temperature control fluid.”

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation “said *first* transmission conduit” in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-18 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collito in view of Knoll.

Collito discloses an elongated conduit 12 comprising a flexible fluid-tight wall having an internal channel with a non-circular cross section and at least two opposed wall members, one with a convex outer surface and an opposed one with a concave outer surface, but does not disclose a polymeric material and a rib/tab.

Knoll (Figure 2A) discloses an elongated conduit 1 comprising a flexible fluid-tight wall having an internal channel with a non-circular cross section and at least two opposed wall members with an axially and radially inwardly extending rib/tab 2 for the purpose of maintaining structural integrity and promoting turbulence for heat transfer.

Since Collito and Knoll are both from the same field of endeavor and/or analogous art, the purpose disclosed by Knoll would have been recognized in the pertinent art of Collito.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Collito a rib/tab for the purpose of maintaining structural integrity and promoting turbulence for heat transfer as recognized by Knoll.

It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Thus, to employ a conduit composed of a polymeric requires only routine skill in the art. Inherently, the physical property of polymeric materials are flexible and would provide a conduit being inflatable by a fluid.

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Regarding claim 21-22, Figure 2 of Collito discloses the first and second walls are arcuate.

Claims 1-2, 4-7, 9-10, 12-16, 23, 25-28, 30 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collito in view of Knoll as applied to claims 17-18 and 21-22 above, and further in view of Tremont.

The combined teachings of Collito and Knoll lacks an elongate cover. Note Collito (column 3, lines 10-13) discloses the conduits may be secured in any suitable manner.

Tremont (Figures 6-7) discloses an elongate structure comprising a transmission conduit 32; one flexible elongated temperature control conduit 22; and an elongated cover 48 holding the temperature control conduit within a cavity/pocket onto the transmission conduit for the purpose of ease of maintenance and assembly.

Since Collito and Tremont are both from the same field of endeavor and/or analogous art, the purpose disclosed by Tremont would have been recognized in the pertinent art of Collito.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Collito an elongated cover for the purpose of ease of maintenance and assembly as recognized by Tremont. As applied above, to employ a temperature control conduit composed of a polymeric requires only routine skill in the art.

Regarding claim 2, Tremont (column 2, lines 63-66) discloses the elongated cover 48 is impermeable, which is read as “fluid-tight.”

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Regarding claims 4-5 and 26, Tremont (column 2, lines 63-66) discloses the flexible elongated cover 48 requires a means 56, 58 for securing to the transmission conduit 32, and is read as having “no integral or superficial structural reinforcement.”

Regarding claims 6-7, 9-10, 14 and 27-28, the claims are met by Knoll above.

Regarding claim 12, Figure 2 of Collito discloses two temperature control conduits 12.

Regarding claim 13, as noted above, inherently, the physical property of polymeric materials are flexible and would provide a conduit being inflatable by a fluid.

Regarding claims 15-16 and 33, as applied to claims 21-22 above, Figure 2 of Collito discloses the first and second walls are arcuate.

Regarding claims 23, 30 and 32, Tremont (column 2, lines 63-66) discloses the elongated cover 48 is composed of flexible layers 50, 52 and has releasable fasteners 56, 58.

Regarding claim 25, the elongated cover 48 of Tremont is read as being “homogenous.”

Claims 11 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collito in view of Knoll and Tremont as applied to claims 1-2, 4-7, 9-10, 12-16, 23, 25-28, 30 and 32-33 above, and further in view of Gross.

The combined teachings of Collito, Knoll and Tremont lacks a pressure sensor.

Gross discloses an elongate structure comprising a transmission conduit 17, an elongated temperature control conduit 19, and a pressure sensor 51 in communication with the conduit 19 for the purpose of detecting leaks in the transmission conduit 17.

Since Collito and Gross are both from the same field of endeavor and/or analogous art, the purpose disclosed by Gross would have been recognized in the pertinent art of Collito.

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It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Collito a pressure sensor for the purpose of detecting leaks in the transmission conduit as recognized by Gross. The specific location of the pressure sensor is considered to be an obvious design choice, producing no new and/or unexpected results and solving no stated problem. One of ordinary skill in the art would locate the pressure sensor in any location feasible or most effective.

Response to Arguments

The objection to claim 8 under 37 CFR 1.75(c) is withdrawn in view of the claim cancellation.

The rejection under 35 U.S.C. 112, second paragraph, is withdrawn in view of the claim amendments.

Applicant's arguments have been fully considered but they are not persuasive.

Although the after final amendment did not raise new issues, the Examiner believes application was not ready for appeal, since further issues were not addressed.

Regarding applicant's remarks with respect to the combination of Collito and Knoll, the Examiner would like to remind applicant that the claim merely recites a conduit not in combination with the transmission conduit. The flexible conduit 12 of Collito is formed in any suitable manner (column 2, lines 30-34) and the elongated conduit 1 of Knoll (Figure 2A) is flexible as demonstrated by the oval cross sections being flattened in the final product. Collito does not disclose the conduit is deformed. Notwithstanding applicant's remarks, the cited case

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law to *In re Leshin* was not traversed and the modification of a polymeric material would have been obvious to one of ordinary skill in the art.

Applicant's remarks with respect to the secondary reference of Tremont are not persuasive. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims do not structurally define over the cavity/pocket defined by the elongated cover 48 of Tremont. Furthermore, the "term" cavity is not present in applicant's disclosure either.

Regarding claims 11 and 29, the rejection in view of Gross provides evidence for the Examiner's Official Notice of pressure sensors. Furthermore, an objection to the drawings under 37 CFR 1.83(a) and rejection under 35 U.S.C. 112, first paragraph are applicable.

Regarding claim 33, the limitations are similar to claim 22. It is readily apparent that Figure 2 of Collito discloses the first and second walls are arcuate.

Aside from applicant's remarks, the Examiner regrets the lengthy prosecution of this application and would like to clarify the finality of the previous Office action. In the Office action mailed on December 9, 2009, claims 30 and 32 were indicated as allowable subject matter. The amendment filed on March 9, 2010 rewrote the claims in independent form. However, the claims were rejected by the newly found reference of Collito, which was cited in an issued patent having a common inventor and common counsel. In the event the reference of Collito was filed in an Information Disclosure Statement, the Office action would have been made final.

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Applicant is reminded of his duty to disclose under 37 CFR § 1.56, which states in part:

Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. *The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability.* Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned (emphasis added).

Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonard R. Leo whose telephone number is (571) 272-4916. The examiner can normally be reached on Monday thru Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/ Leonard R. Leo /
PRIMARY EXAMINER
ART UNIT 3744

October 19, 2010